IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 19180 of 2007(G)

AGAINST THE ORDER IN EP.640/2004 IN
OS.887/1999 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

BAIJURAJ, S/O.NEDUMPARAMBIL VELAYUDHAN,
KUNDALIYAUR VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.P.G.SURESH
SRI.C.V.MANUVILSAN
SRI.P.K.KHALEEMUDHEEN
SRI.G.SUDHEER (THURAVOOR)
SRI.P.C.ANIL KUMAR

RESPONDENTS:

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1. KOVILAKAM CHITS & FINANCIAL SERVICE (P)
LTD, THRISSUR, KOORKKENCHERY DESOM,
THRISSUR.

2. MANOHARAN,
S/O.NEDUMPARAMBIL VELAYUDHAN,
KUNDALIYAUR VILLAGE, CHAVAKKAD TALUK.

3. BABU RAJ,
S/O.NEDUMPARAMBIL VELAYUDHAN,
KUNDALIYAUR VILLAGE, CHAVAKKAD
TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: A TRUE PHOTOCOPY OF THE ORDER IN E.P.640/04 IN O.S.87/99 ON THE FILES OF LEARNED ADDL. SUB JUDGE-II THRISSUR

JJ /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 19180 OF 2007 G

Dated this the 31st July, 2007.

JUDGMENT

The third respondent in the execution petition is the writ petitioner before this court. The court below, on a consideration of the materials available ordered warrant of arrest to respondents 1 to 3. The case against the present writ petitioner who is the third respondent is to the effect that he is a poojari of a temple by name Sree Subramanya Dharma Sasthamangalam. He has mounted the box and given evidence that he is not a poojari. The learned Subordinate Judge held that third respondent has not adduced any evidence to show that he was not employed as poojari or doing any work. The court is directing the party to have negative evidence when positive has to be adduced by the decree holder. The approach of the court below so far as it relates to the third respondent is concerned, who is before me, is not correct. Therefore, the order under challenge so far as it relates to third respondent in E.P is set aside and the matter is remitted back to the court below and direct the court to give equal opportunities to the third respondent in the execution petition and the decree holder by production of oral or

documentary evidence, as the case may be and then dispose it of in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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